IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No959 of 2007

Date of decision : 30.10.2007

Jaswant Singh

… Appellant

Versus

Patiala Education Trust Society and others

…Respondents

Present : Mr.A.S.Syan, Advocate for the appellants.

Vinod K.Sharma, J. (Oral)

CM No.2647 CI of 2007

This is an application under Section 5 of the Limitation Act for condonation of delay of 5 days in filing the appeal.

For the reasons mentioned in the application, delay of 5 days in filing the appeal is condoned subject to all just exceptions. CM stands disposed of.

RSA No.959 of 2007

This Regular Second Appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff-appellant for permanent injunction restraining defendants No.1 and 2 from demolishing and raising construction over the disputed property. The plaintiff claimed that he was Secretary of the Patiala Education Trust Society, Patiala and therefore, being authorized person, was competent to maintain the present suit.

On appreciation of evidence, learned Courts below have been pleased to record that the plaintiff-appellant failed to prove that he was the

Secretary of the Trust or that he was specifically authorized by the Trust to maintain the present suit. It was also noticed by the Court that in cross-examination, the plaintiff-appellant had admitted that earlier he had filed a suit for permanent injunction against the defendant-society seeking injunction from demolishing the building over the suit property. The said suit was dismissed. He also admitted that no resolution was passed by the trust appointing him as trustee nor he produced any letter for appointing him as trustee by Shri Davinder Singh Kaintal. He even failed to answer the question that when Shri K.K.Tandon, Chairman of the trustees appointed him as Secretary, as such he could not prove that he is Member Secretary of the Trust. In the cross-examination, the plaintiff-appellant had admitted that he never paid any salary to any teacher of the school as it is being run by Society from the income of the school.

The plaintiff-appellant has admitted that the school was running smoothly and that the trust accounts were separate form the accounts of the school. The learned courts below found that the documents Exhibit PW-3/A to PW-3/F were not proved in accordance with law on which the sole reliance was placed by him to prove his locus to maintain the suit. On appreciation of evidence and admission made by the plaintiff-appellant in cross-examination, a concurrent finding of fact has been recorded by the learned Courts below holding that the plaintiff failed to prove that he was the Secretary or Trustee of the Trust i.e. defendant No.3, so as to maintain the present suit.

Learned counsel for the appellant contends that he was the Member Secretary of the Patiala Education Trust as all the other trustees have died and he is the only trustee to look after the interest of the Trust. It was case of the plaintiff that he was entitled to seek injunction against the

demolition of the building of the school. This plea is not available to the plaintiff-appellant as the suit earlier filed by the appellant against the contesting defendants was ordered to be dismissed for want of locus standi to maintain the suit. In the present suit also plaintiff failed to prove his appointment as trustee, or as Secretary. He even failed to produce any resolution of the trust, which could give him locus standi to maintain the present suit. Thus, learned Court below rightly dismissed the suit filed by the plaintiff on the ground of his locus to file the present suit.

No ground is made out to interfere in the concurrent finding of fact recorded by the learned Courts below.

No substantial question of law has been raised or arises in this appeal for consideration by this Court.

No merit.

Dismissed.

[**Vinod K.Sharma**]

Judge

30.10.2007

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